

**GALAPATHTHI**  
**v.**  
**KUDALIGAMA, CHAIRMAN, EDUCATION SERVICE**  
**COMMITTEE OF THE PUBLIC SERVICE COMMISSION**  
**AND OTHERS**

SUPREME COURT  
G. P. S. DE SILVA, CJ.,  
ANANDACOOMARASWAMY, J. AND  
GUNASEKERA, J.  
S.C. APPLICATION NO. 829/96  
3RD FEBRUARY, 1998

*Fundamental Rights – Termination of a teacher's appointment – Article 12 (1) of the Constitution.*

The petitioner who applied for a post of Assistant Teacher in response to a Gazette Notification (P1) was appointed a Dancing teacher with effect from 1.1.1990. She was confirmed in that post with effect from 1.11.1994. On 13.9.96 the Education Authorities terminated her appointment with immediate effect on the ground that she did not possess a pass in Arithmetic at the National Certificate of General Education examination, which was a requirement "according to the policy of the Education Department".

**Held:**

Having regard to the *Gazette* Notification P1 and the circulars relied upon by the 2nd respondent, Secretary to the Education Service Committee to justify the termination of the petitioner's services, the said termination was untenable, arbitrary and violative of Article 12 (1) of the Constitution.

**APPLICATION** for relief for infringement of fundamental rights.

*Mohan Peiris* with *Ms. Nuwanthi Dias* and *Miss L. Jayasinghe* for petitioner.

*N. Pulle*, S.C for respondents.

*Cur. adv. vult.*

3rd February, 1998

**GUNASEKERA, J.**

The petitioner having completed her secondary education at the Hambantota Balika Vidyalaya, Tangalla, had passed the National Certificate of General Education (N.C.G.E) in 1976 and secured passes in seven subjects at one and the same sitting. The details of her examination results are as follows:

Subjects	Grades
1. Sinhala	B
2. English	C
3. Health Science	C
4. Buddhism	C
5. Aesthetic Studies (Dancing)	B
6. Home Science	B
7. Technical Studies	C

In addition she had passed the G.C.E. (Advanced Level) examination in 1980 securing a pass in Economics and a Credit pass in Sinhala.

Consequent upon a *Gazette* Notification published on 13.7.1989 (marked 'P1'), calling for applications for the appointment of Sinhala medium and Tamil medium Assistant Teachers on a district basis published by the Secretary of the Education Service Committee of the Public Service Commission (the 2nd respondent) the petitioner

had applied for the post of an Assistant Teacher and had been appointed by letter dated 23.10.1990 (marked 'P2') as a Dancing Teacher to the Hambantota Seenimodara Junior School, Nakulugamuwa, with effect from 01.11.1990. Thereafter by letter dated 25.11.1994 (marked 'P3') the petitioner had been confirmed in her post with effect from 01.11.1994 subject to a probationary period of three years by the 6th respondent. Whilst the petitioner was serving as a confirmed Dancing Teacher in the aforesaid Seenimodara Junior School she alleges that the 5th respondent had purported to terminate her services by letter dated 13.9.1996 (marked 'P4') with immediate effect consequent upon a decision taken by the 1st to 4th respondents on the basis that she had not possessed the basic qualifications for appointment. An appeal made by the petitioner to the 2nd respondent by P5 dated 3.10.1996 had been turned down by the 2nd respondent by his letter dated 01.11.1996 (marked 'P6') on the ground that the petitioner had failed in Arithmetic at the G.C.E. (O/L) examination, which was a requirement according to the accepted policy of the Education Department.

Learned counsel for the petitioner at the hearing of this application contended that nowhere was it specified in the *Gazette* P1 calling for applications for appointment of Assistant Teachers on a district basis that a pass in Arithmetic was a required qualification for appointment. He drew our attention to column 3 of the said *Gazette* notification dealing with educational qualifications. According to 3.1 an applicant should have passed in any three subjects at the G.C.E. (A/L) examination. This requirement was dispensed with in cases where the applicant had specialised qualifications in specified subjects such as Religion, Physical Education and Sports, Language (Sinhala, Tamil or English) and Aesthetic Studies, Science, Mathematics or Technical subjects. It was his contention that the petitioner had secured a B grade pass in Aesthetic Studies (Dancing) at the N.C.G.E examination and it was on the basis that such qualification complied with the requirements specified in the *Gazette* notification that she applied and was selected for appointment.

It was further submitted by learned counsel that although the 2nd respondent in the affidavit filed seeks to justify the termination of the petitioner's services on the basis that the petitioner did not possess a pass in Mathematics at the N.C.G.E. examination which was a requirement in terms of the policy of the Ministry of Education in the

scheme of recruitment for uncertificated teachers that the so called policy of the Ministry of Education is not reflected anywhere in P1 the *Gazette* notification by which applications were called for appointment of Assistant Teachers. In any event it was contended by learned counsel that the scheme of recruitment for uncertificated Sinhala and Tamil Assistant Teachers relied upon by 2nd respondent to justify the termination of the petitioner's services was not applicable as the petitioner had applied under the scheme provided for by *Gazette* notification P1.

Having examined the *Gazette* notification P1 and the circulars relied upon by the 2nd respondent to justify the termination of the petitioner's services we are of the view that the grounds relied upon by the respondents for the said termination are untenable.

For the reasons stated we hold that the termination of the petitioner's services by P4 was arbitrary and was violative of Article 12 (1) of the Constitution. Accordingly we quash the letter of termination dated 13.9.1996 (marked 'P4'). The application of the petitioner is allowed and we direct the State to pay a sum of Rs. 15,000/- as costs of this application to the petitioner.

Learned counsel for the petitioner submitted that the petitioner continued to be in service notwithstanding the confirmation of the termination of her services by P6 consequent upon a Stay Order issued by this Court in this application. In the circumstances, we note that there had been no break in service of the petitioner. As such we direct the 1st to 6th respondents to permit the petitioner to continue in service without interruption.

**G.P.S. DE SILVA CJ.** – I agree.

**ANANDACOOMARASWAMY, J.** – I agree.

*Relief granted.*